Supreme Court, U. S.
FILED
JUN 27 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1979

NO. 79-1388

KARL J. KIRCHBERG

Appellant,

--V.--

JOAN PAILLOT FEENSTRA

Appellee.

--V.--

EDWIN W. EDWARDS
and STATE OF LOUISIANA

ON APPEAL FROM THE

FIFTH CIRCUIT COURT OF

APPEALS FOR THE UNITED STATES

OF AMERICA

JURISDICTIONAL STATEMENT FILED MARCH 8, 1980
PROBABLE JURISDICTION NOTED APRIL 28, 1980

SUBJECT INDEX

		PAGE
1.	Relevant Docket Entries	1
2.	Petitions, Answers, Orders, Motions, Reply, and Notice of Appeal	2
3.	Judgment	40
4.	Corrected Judgment	41
5.	Court Opinions	42
6.	Appended Orders of Court	42
7.	Deleted Textual Materials . . .	43
8.	Financial Statement of Costs of Printing Appendix . . .	49
9.	Certificate of Service	50

1.
Relevant Docket Entries

Date	Nr.	Proceedings
3-22-76	1	COMPLAINT: Issued 2 summons
5-6-76	3	ANSWER of Feenstra
6-14-76	9	Pltfs. answer to counterclaim of Feenstra
6-17-76	10	3rd party defts. Edwards & State of La.'s mtn. for summ. jdgmnt; hrg. 7/7/76
6-23-76	10(a)	Pltfs. mtn. for summ. jdgmnt. on counterclaim; hrg. 7/7/76.
4-22-77	33	ORDER; Mtn of State of La. for summ. judgment on second counterclaim of Joan P. Feenstra, previously submitted, is hereby GRANTED. (MLS) 4/21/77; ent 4/25/77
5-9-77	35	NOTICE OF APPEAL of J. P. Feenstra from final order granting deft's in counterclaim mtn for summ judgment, signed 4/21/77
5-31-77	36	Deft's mtn & ORDER dismissing first counterclaim against pltf (MLS) 6/3/77; ent 6/6/77
6-27-77	37	Pltf's mtn. and ORDER to dismiss complt vs deft. (CSjr) 6/27/77; ent 6/28/77

7-6-77	38	JUDGMENT in favor of 3rd pty defts, Edwin Edwards & State of La. & against deft, Joan Paillot Feenstra, dismissing 3rd pty suit (CLERK NBJ) 7/6/77; 4/25/77, nunc pro tunc, on 7/6/77.
7-19-77	39	JUDGMENT (Corrected) in favor of 3rd pty defts, K. J. Kirchberg, E. W. Edwards & State of La. & against deft, Joan Paillot Feenstra, dismissing 3rd pty suit (CLERK-NBJ) 7/18/77; entered 4/25/77, nunc pro tunc, 7/19/77.

2

Petitions, Answers, Orders, Motions, Reply and Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J KIRCHBERG	*	CIVIL ACTION
VS.	*	NO.
JOAN PAILLOT FEENSTRA	*	SECTION:
* * * * * * * * * * * * * *	*	

PETITION FOR DECLARATORY JUDGMENT

The petition of Karl J. Kirchberg, a person of age and domiciled in Orleans Parish, State of Louisiana, respectfully represents that:

1.

Joan Paillot Feenstra is a person of the full age of majority and domiciled in the Parish of Orleans, State of Louisiana.

2.

This is an action for a declaratory judgment as authorized by Section 2201 of Title 28 of the United States Code, and is brought because there is an actual controversy now existing between the parties in the above numbered action, as to which the plaintiff seeks the judgment of this Honorable Court.

3.

The jurisdiction of this Court is based on a federal question, more particularly, Sections 1602 (f), and 1635 (a) of Title 15 of the United States code. Jurisdictional amount

is waived as per Section 1681 (p) of Title 15 of the United States Code.

4.

The nature of the controversy involving these statutes is as follows: On October 17, 1974 the defendant's husband, Harold C. Feenstra, gave the plaintiff a promissory note for Three thousand ($3,000.00) dollars. This note was secured by a mortgage on the defendant's property. The consideration for this note arose from a contract of employment whereby the defendant's husband secured the services of the plaintiff to defend him in a criminal action. The note was given as a retainer. Subsequently, the plaintiff successfully defended the defendant's husband. Plaintiff avers that the retainer was thus earned.

5.

Plaintiff avers that at no time was he ever in the business of extending credit. Further, he only accepted the note instead of

cash in view of the circumstances of this particular case, to wit: The defendant's husband did not have any other means of securing his services.

6.

Since October 22, 1974, the defendant's husband has paid only $984.72 on the said note. Plaintiff placed the defendant's husband in default and then filed a petition in Civil District Court of Orleans Parish seeking to foreclose on the mortgage via executiva. A copy of that petition is attached hereto for reference.

7.

The particular federal statutes previously enumerated come into this controversy because the attorney for the defendant, Joan Paillot Feenstra, has alleged that the mortgage is invalid under the terms of Section 1635 (a) of Title 15 of the United States Code, since the plaintiff, Karl J. Kirchberg,

failed to give proper disclosure under that section of the code. Plaintiff contends that he is not a creditor under the definition of Section 1602 (f) of Title 15 of the United States Code, and as such, is not within the provisions of that section of the code. Further, plaintiff seeks a declaratory judgment as to his status since the provisions of Sections 1640 (a) and 1611 of Title 15 of the United States Code provide for stringent penalties for violations of that section.

WHEREFORE, plaintiff prays that a copy of these proceedings be served upon the defendant, and that the following relief be afforded him;

1. That this Court find and decree that the plaintiff is not a creditor within the definition of Section 1602 (f) of Title 15 of the United States Code.

2. That this Court find and decree that

the plaintiff is not a creditor within the definition of Section 1602 (f) of Title 15 of the United States Code.

2. That this Court find and decree that since the plaintiff is not within the jurisdiction of Title 15 of the Code, he is not liable for any civil or criminal sanctions for failing to give the proper disclosure.

3. That this Court issue a declaratory judgment settling the issues presented by Title 15 of the United States Code, and

4. That the defendant, Joan Paillot Feenstra, be charged with all costs of this litigation.

William R. Brough
Attorney for Plaintiff
315 Richards Building
New Orleans, Louisiana
70112
522-8706

Please Serve:

Joan Paillot Feenstra
Campsite, Irish Bayou, New Orleans, Louisiana

Barbara Hausman-Smith
Attorney for Joan Paillot Feenstra
New Orleans Legal Assistance Corporation
226 Carondelet Street
New Orleans, Louisiana 70130

CIVIL DISTRICT COURT

FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. DIVISION " " DOCKET NO.

KARL J. KIRCHBERG

versus

JOAN PAILLOT, widow of first marriage to TWEED KELLER MARSH, wife of/and HAROLD C. FEENSTRA

Filed: _____ _____
Deputy Clerk

PETITION FOR MORTGAGE FORECLOSURE, BY EXECUTORY PROCESS

The petition of Karl J. Kirchberg, domiciled in the State of Louisiana, Parish of Orleans, respectfully represents, that:

1.

Joan Paillot Feenstra and Harold C. Feenstra, both of age, are referred to herein

as debtors. The whereabouts of Harold Feenstra are unknown. Therefore an attorney at law should be appointed to represent him in these proceedings.

2.

Plaintiff is the holder in due course of one certain promissory note, executed by the debtor, to the order of Karl J. Kirchberg, and by him endorsed in the principal sum of three thousand and no/100 ($3,000.00) Dollars, payable on demand after date of the note. This original note, which is referred to as the mortgage note, is attached as an exhibit. This note further provides that 30% additional will be paid as attorney's fees. The note also provides for interest thereon at the rate of 8% per annum from date of demand.

3.

The mortgage note was paraphed "Ne Varietur" by E. Howard McCaleb, III, Notary

Public, on the 22nd day of October, 1974, to identify it with an Act of Mortgage (referred to as the Act of Mortgage), executed on the same day by the maker of the mortgage note, in favor of the payee of the mortgage note in the same sum as the mortgage note, to secure the payment of the mortgage note, mortgaging the hereinafter described property.

4.

The Act of Mortgage was duly recorded in the Mortgage Records of Orleans Parish, Louisiana, under Entry No. 143760 of that Parish. A certified copy of this Act of Mortgage is attached as an exhibit.

5.

The property mortgaged in the act of mortgage is described as follows:

> A CERTAIN LOT OF GROUND, in the THIRD DISTRICT, fauboug De Montlouzin, in Section known as Irish Bayou Subdivision lot #7 Section 8, accordingly #7 commences at a point on the westerly sideline of Lake Pontchartrain Bridge

approach road. Site 300 feet measured in a southerly direction along the sidelines of the said approach road from the northeast corner of Section 8 of Irish Bayou Subdivision. And measuring 50 feet front to a sideline of said lot and having a direction of North 83° and 4 minutes and 8 lines East.

The sale does not include the mineral rights to the property.

With all of the improvements thereon.

Being the same property purchased from Mr. & Mrs. August J. Ciccio by Joan Paillot, widow of first marriage to Tweed Keller Marsh, wife of and Harold C. Feenstra before Joseph H. Hurendon, Notary Public on February 9, 1966, and recorded in the Parish of Orleans in the Conveyance Office thereof in COB 673 folio 334 on February 11, 1966.

6.

The mortgage note is subject to credits paid on the principal, leaving an unpaid balance due on it in the sum of two thousand fifteen and 28/100 ($2,015.28) dollars.

7.

The Act of Mortgage and Mortgage Note provide that if there is a default in the payment of any installment, the entire principal sum, interest, advances for the care and preservation of the property, and attorney's fees shall at once become due at the option of the holder of the mortgage note without notice.

8.

The note was not paid aft er demand and having not been paid, and, in accordance with the terms of the mortgage note, petitioner has exercised and does hereby exercise its option to declare the entire principal sum, interest, advances for the care and preservation of the property, and attorney's fees due and payable. The defendant is therefore indebted to petitioner in the full sum of two thousand fifteen and 28/100 ($2,015.28) dollars, with 8% per annum interest thereon

from February 11, 1976 until paid, plus 30% additional on both principal and interest as attorney's fees.

9.

This amount is past due and remains unpaid despite amicable demand.

10.

The act of mortgage is evidence by an authentic act importing a confession of judgment for the entire amount due petitioner as set forth above.

11.

Appraisal was waived in the Act of Mortgage; plaintiff desires to have the mortgaged property sold without appraisal.

12.

Under the provisions of Louisiana Revised Statutes 13:4359, petitioner demands that 100% of the purchase price shall be paid in cash at the moment of adjudication.

WHEREFORE, the annexed exhibits considered,

petitioner respectfully prays that:

I.

The Court order the issuance of a writ of seizure and sale directed to the Sheriff of Orleans Parish, Louisiana commanding him, after the Clerk has demanded payment from the defendant, duly appointed attorney, to seize the mortgaged property described in the petition, and to sell it in accordance with all of the requirements of law, at public auction, for 100% cash to be paid at the moment of adjudication, without appraisal, to the highest bidder.

II.

Out of the proceeds of this sale petitioner be paid by preference and priority over all other persons and creditors whomsoever, the full amount herein claimed, as follows:

1. Balance due on principal of mortgage note . . . $2,015.28

2. 8% per annum interest thereon from February 11, 1976, until paid . . . To be computed

3. Attorney's fees - 30% of principal and interest . .To be computed

4. All costs

III.

Petitioner prays that an attorney at law be duly appointed to represent the defendant herein, Harold C. Feenstra; that a copy of these proceedings be duly served on said attorney and Joan Paillot Feenstra, and that after due proceedings had, there be judgment rendered in favor of petitioner as prayed for.

William R. Brough
Attorney for Petitioner
315 Richards Building
New Orleans, Louisiana 70112
522-8706

A F F I D A V I T

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, PERSONALLY CAME AND APPEARED:

WILLIAM R. BROUGH,

who, being first duly sworn, did depose that:

He is the attorney for plaintiff in the above and foregoing petition, and, as such, duly authorized to execute this affidavit; that he has read the petition, and that all the allegations of fact contained in it are true and correct, and that the obligation due plaintiff has matured by virtue of the facts set forth in the petition.

WILLIAM R. BROUGH

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY
OF _____, 1976.

NOTARY PUBLIC

O R D E R

The foregoing petition, annexed documents, and the premises considered:

LET a three day notice to pay be issued herein, and if the debtors fail to pay the indebtedness within said period, let a writ

of seizure and sale issue herein commanding the Sheriff to seize and sell the property affected by the mortgage, as prayed for and according to law.

New Orleans, Louisiana.

_____, 1976

_____
J U D G E

O R D E R

LET _____,
Esquire, an attorney at law, be, and he is hereby appointed to represent defendant, Harold Feenstra, in these proceedings.

New Orleans, Louisiana

_____, 1976

_____
J U D G E

SERVE:

Defendant, through
Curator-Ad-Hoc Attorney

and

Joan Paillot Feenstra
Highway 11
Irish Bayou, La.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J.KIRCHBERG	*	CIVIL ACTION
	*	
VS.	*	NO. 76-842
	*	
JOAN PAILLOT FEENSTRA	*	SECTION: G(C)
* * * * * * * * * * * * * * *	*	CLASS ACTION

ANSWER

NOW INTO COURT, through undersigned counsel comes defendant, Joan Paillot Feenstra, who respectfully for answer to plaintiff's complaint alleges:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The court lacks jurisdiction over the subject matter of plaintiff's complaint.

THIRD DEFENSE

The plaintiff's complaint does not meet the jurisdictional prerequisites of this Court.

AND NOW, to answer each and every one of the allegations in plaintiff's complaint, defendant avers:

I.

Defendant admits the allegation of fact found in paragraph 1 of plaintiff's complaint.

II.

Defendant denies the allegations of fact contained in paragraphs 2 through 7 of plaintiffs complaint.

Now, as counterclaims, pursuant to Rule 13 (a) of the F.R.C.P., defendant alleges the following:

FIRST COUNTERCLAIM

JURISDICTION

1. This action for recission arises under the Truth-in-Lending Act, 15 U.S.C. §§1601 et seq. Jurisdiction is vested in this Court

pursuant to 15 U.S.C. §§1635 and 1640(e) and 28 U.S.C. 1337.

PARTIES

2. The First Counterclaim is brought by defendant, Joan Paillot Feenstra, a natural person of full age of majority, and a citizen of the United States and the State of Louisiana.

3. The First Counterclaim is brought against the plaintiff, Karl J. Kirchberg, a person of full age and majority, residing and domiciled in New Orleans, Louisiana. Plaintiff is an attorney licensed to practice law in the State of Louisiana. Plaintiff is a creditor under 15 U.S.C. 1602 (f) who regularly extends, or arranges for the extension of credit for which the payment of a finance charge is required.

STATEMENT OF FACTS

4. On October 17, 1974 Harold C. Feenstra, husband of defendant, signed a promissory note to the order of plaintiff, on demand

for $3,000.00 with interest at the rate of 8% per annum, and providing for 30% attorney's fees if not paid when due. This note evidenced an obligation for future personal legal services to be provided to Harold C. Feenstra.

5. On October 22, 1974, Harold C. Feenstra executed an Act of Mortgage on real property owned by the community and located in the Irish Bayou subdivision, Lot #7, Section 8, New Orleans, Louisiana. This Act of Mortgage was made in favor of plaintiff and reiterated a debt of $3,000.00.

6. Plaintiff creditor failed to make any disclosures to maker, Harold C. Feenstra or to his wife, the defendant, as required under the Truth-in-Lending Act and Regulation Z, 12 C.F.R. Part 226.9 et seq.

7. Defendant sent a letter via certified mail which was received by plaintiff on March 4, 1976, whereby defendant notified plaintiff

of her intention to rescind the mortgage transaction and offering to return plaintiff to his financial status quo prior to the Act of mortgage. (Attachment No. 1).

8. Since the recission letter was tendered, plaintiff has not cancelled the mortgage upon defendant's property, nor has he returned any money paid upon the obligation.

First Claim for Relief

9. The act of Plaintiff Karl J. Kirchberg in failing to make the proper disclosures to defendant under the Truth-in-Lending Act and Regulation Z, renders said plaintiff liable to defendant for (a) cancellation of the mortgage which plaintiff now holds on defendant's property, (b) return of any payments made on the note and (c) reasonable attorneys fees and costs.

SECOND COUNTERCLAIM

JURISDICTION

10. Defendant's counterclaim for declarator

relief arises under the Fourteenth Amendment to the United States Constitution. The amount in controversy exceeds the sum of $10,000.00 excluding interest and costs. This Court has jurisdiction of the counterclaim under 28 U.S.C. #1331.

PARTIES

11. Defendant institutes this counterclaim for declaratory relief on behalf of herself and, pursuant Rule 33 (b) (2) of the Federal Rules of Civil Procedure, on behalf of all persons similarly situated. Defendant seeks relief on behalf of a class composed of all married women in the State of Louisiana who have acquired immovable community property during the course of their current marriages and who have not filed declaration by authentic act that their consent is necessary for a lease, sale or mortgage of such property under Article 2334 of the Civil Code of Louisiana. By its very definition the

class is so numerous that joinder of all members is impracticable. There are questions of law common to the class. The claims of the defendant are typical of the claims of the class. The defendant will fairly and adequately protect the interests of the class. The plaintiff in this action has acted on grounds generally applicable to the class, thereby making appropriate declaratory relief with respect to the class as a whole.

12. The second counterclaim is brought against the following:

a) Karl J. Kirchberg (see No. 3)

b) The Honorable Edwin W. Edwards, Governor of the State of Louisiana, who pursuant to LSA-Constitution, Article 4, §5 is charged with the duty to execute the laws of the State of Louisiana;

c) The State of Louisiana.

STATEMENT OF FACTS

13. As previously alleged in paragraph 4 of plaintiff's complaint, defendant's husband Harold C. Feenstra, during the course of their marriage, gave the plaintiff a promissory note for $3,000.00 as pre-payment for personal legal services. Harold C. Feenstra required representation for criminal charges brought against him by the Orleans Parish District Attorney for child molestation of his nine year old daughter. The note was secured by a mortgage on the home of Harold Feenstra and the defendant, which was community property under Louisiana law, having been acquired during the course of their marriage. Plaintiff subsequently recorded that mortgage in the Mortgage and Conveyance Office for Orleans Parish.

14. Defendant was not informed, nor was she given any notice whatsoever, of the execution or recordation of the mortgage on her home.

15. At the time the home was acquired defendant did not know that her husband could sell, lease, or mortgage the home without her consent unless she filed a declaration under Article 2334 of the Louisiana Civil Code. Defendant was ignorant of the terms of that codal provision which allows a husband to lease, mortgage, or sell immovable community property without the authority or consent of his wife unless a declaration stating that her authority or consent are required has been executed and filed in the Mortgage and Conveyance Record Office of the Parish in which the property is situated. In this respect, defendant was and is typical of thousands of married women throughout the State of Louisiana who have acquired community property in the course of their marriages and who have not executed a declaration under Article 2334.

16. Defendant did not become aware of the fact that her home was mortgaged until May,

1975 when plaintiff informed her on the phone of this existence of said mortgage and threatened to foreclose on his mortgage.

17. On information and belief, defendant alleges that her difficulties resulting from the unauthorized mortgage of her home are typical of those suffered by married women in Louisiana whose husbands have exercised their rights under Art. 2334 and have either mortgaged, sole or leased immovable community property without their wives' consent.

CAUSE OF ACTION

18. That provision of Art. 2334 of the Louisiana Civil Code which allows a husband to lease, sell or mortgage immovable community property without the consent of his wife unless she has made a specific declaration that her consent is required is unconstitutional on its face under the Fourteenth Amendment to the United States Constitution in that it deprives plaintiff and the class of married

women she represents to equal protection under the laws and to due process of law.

19. The execution of mortgage of plaintiff's property without her consent as provided for and allowed by Art. 2334 of the Louisiana Civil Code, constituted a violation of her rights to equal protection and due process of law under the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF

WHEREFORE, defendant, counterclaimant, prays that she and the class she represents be granted the following relief by this Court:

20. That this Court determine, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, that this counterclaim is an appropriate class action and that the defendant in this case may represent the class as defined in Paragraph 11 of this Counterclaim;

21. That this Court issue a declaratory judgment under 28 U.S.C. 2801, et seq., that the provision of Art. 2334 of the Louisiana

Civil Code which allows the alienation of immovable community property by a husband without his wife's consent unless she has made a declaration that her consent is required, is unconstitutional as being in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

22. That this court issue a declaratory judgment that the mortgage executed on defendant's home by her husband, Harold Feenstra, is void as having been executed and recorded without her consent pursuant to an unconstitutional state statute.

23. That this Court dismiss plaintiff's suit at his own cost, denying him the relief requested therein.

24. That this Court award plaintiff and the Class she represents such other relief as they may be entitled to.

Respectfully submitted,

New Orleans Legal
Assistance Corporation
605 Carondelet Building
New Orleans, Louisiana
70130
Telephone: 529-7551

BY: _____
BARBARA HAUSMAN-SMITH

OF COUNSEL:
George M. Strickler, Jr.
344 Camp Street
New Orleans, Louisiana
70130
504-581-2688

Jack Mark Stolier
New Orleans Legal
Assistance Corp.
605 Carondelet Building
New Orleans, Louisiana
70130
Telephone: 529-7551

PLEASE SERVE:

Karl J. Kirchberg
13344 Chef Menteur Highway
New Orleans, Louisiana

Governor Edwin W. Edwards
Governor's Office
Baton Rouge, Louisiana

State of Louisiana through the
Secretary of State, Wade O. Martin
Baton Rouge, Louisiana

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J.KIRCHBERG	*	CIVIL ACTION
VS.	*	NO. 76-842
	*	SECTION G
JOAN PAILLOT FEENSTRA	*	

* * * * * * * * * * * * * * * *

REPLY

Now into Court, through undersigned counsel comes plaintiff, Karl J. Kirchberg, defendant in counterclaim, who respectfully for reply to said counterclaim alleges:

First Defense

The Counterclaim fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject matter of defendant's counterclaim.

Third Defense

The defendant's complaint does not meet the jurisdictional prerequisites of this Court.

And Now, to reply to each allegation of defendant's counterclaim, plaintiff avers:

I.

Plaintiff denies the allegations of paragraph 1 of the counterclaim.

II.

Plaintiff admits the allegations of paragraph 2, of the counterclaim.

III.

Plaintiff denies the allegations of paragraph 3 of the counterclaim, excepting that he admits his domicile and that he is a practicing attorney.

IV.

Plaintiff denies the allegations of paragraph 4 of the counterclaim excepting that he admits that Harold C. Feenstra executed a note in his favor.

V.

Plaintiff admits the allegations of paragraph 5 of the counterclaim.

VI.

Plaintiff denies the allegations of

paragraph 6-24 of the counterclaim.

WHEREFORE, plaintiff prays that his reply be deemed good and sufficient, and that, after due proceedings had, there be dismissal of defendant's counterclaim, at defendant's costs.

William R. Brough
Attorney for Karl J. Kirchberg
315 Richards Building
New Orleans, Louisiana 70112
522-8706

C E R T I F I C A T E

I certify that a copy of the foregoing pleadings has been served upon counsel for all parties by mailing the same to each properly addressed and postage prepaid this ____ day of _____, 1976.

WILLIAM R. BROUGH

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	CIVIL ACTION NO. 76-842
VERSUS	SECTION G
JOAN FEENSTRA	CLASS ACTION

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, the Honorable Edwin W. Edwards, Governor of the State of Louisiana, and the State of Louisiana, as Third Party Defendants to the Second Counterclaim, move for a summary judgment against the counterclaimant on the ground that the pleadings and admissions on file show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.

Wherefore, your movers pray that this motion for summary judgment be granted.

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

WARREN E. MOULEDOUX
First Assistant Attorney General

LOUIS M. JONES
Assistant Attorney General

JANICE GONZALES
Staff Attorney

State of Louisiana
234 Loyola Avenue - 7th Floor
New Orleans, Louisiana 70112
(504) 527-8371

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	⁂	CIVIL ACTION
VERSUS	⁂	NO. 76-842
JOAN PAILLOT FEENSTRA	⁂	SECTION "G" (C)

* * * * * * * * * * * * * * * *

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure, Karl J. Kirchberg, as defendant to the Counterclaims, moves for a summary judgment against the counterclaimant

on the ground that the pleadings and admissions on file show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.

WHEREFORE, your mover prays that this motion for summary judgment be granted.

William R. Brough
Attorney for Mover
315 Richards Building
New Orleans, Louisiana
70112

522-8706

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	*	CIVIL ACTION
VERSUS	*	NO. 76-842
JOAN PAILLOT FEENSTRA, ET AL	*	SECTION 6

* * * * * * * * * * * * * * * * * * *

NOTICE OF APPEAL TO THE
FIFTH CIRCUIT COURT OF APPEALS

Notice is hereby given that Joan Paillot Feenstra, defendant and plaintiff in counterclaim, hereby appeals to the Fifth Circuit

Court of Appeals from the final order granting defendant's in counterclaim motion for summary judgment, signed on April 21, 1977.

BARBARA HAUSMAN-SMITH
Attorney for defendant/
plaintiff in counterclaim
New Orleans Legal Assistance
Corporation
605 Carondelet Building
New Orleans, Louisiana 70130
529-7551

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	*	CIVIL ACTION
VERSUS	*	NO. 76-842
JOAN PAILLOT FEENSTRA	*	SECTION G

* * * * * * * * * * * * * * *

MOTION TO DISMISS

Joan Paillot Feenstra, the defendant herein, has filed her First Counterclaim against Karl J. Kirchberg, the plaintiff; and she moves this Honorable Court to dismiss her first counterclaim with prejudice on the grounds that she no longer wishes to pursue

this cause of action.

BARBARA HAUSMAN-SMITH
Attorney for Defendant
New Orleans Legal Services Corp.
605 Carondelet Building
New Orleans, Louisiana 70130
529-7551

ORDER

In light of the foregoing

IT IS ORDERED that the defendant, Joan Paillot Feenstra, be allowed to dismiss the First Counterclaim against Karl J. Kirchberg, with prejudice.

This _____ day of _____, 1977.

DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	*	CIVIL ACTION
	*	
VERSUS	*	NO. 76-842
	*	
JOAN PAILLOT FEENSTRA	*	SECTION "G"

* * * * * * * * * * * * * *

MOTION TO DISMISS

NOW INTO COURT, through undersigned counsel, comes plaintiff and defendant in counterclaim, Karl J. Kirchberg who moves this Honorable Court to dismiss his complaint against defendant Joan Paillot Feenstra.

William R. Brough
Attorney for Plaintiff
315 Richards Building
New Orleans, Louisiana
70112

522-8706

O R D E R

Considering the foregoing,

IT IS ORDERED that plaintiff, Karl J. Kirchberg's complaint against defendant, Joan Paillot Fennstra, be dismissed.

This _____ day of June, 1977.

United States
District Judge

Judgment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	CIVIL ACTION
VERSUS	NO. 76-842
JOAN PAILLOT FEENSTRA	SECTION "G"

J U D G M E N T

The Court having, on April 22, 1977, granted the motion of Edwin W. Edwards and State of Louisiana, for summary judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of third-party defendants, Edwin W. Edwards and State of Louisiana, and against defendant, Joan Paillot Feenstra, dismissing said defendant's third-party suit.

New Orleans, Louisiana, this _____ day of July, 1977.

CLERK, U.S.District Court

ENTERED APRIL 25, 1977, nunc pro tunc, ON JULY 5, 1977.

4

Corrected Judgment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KARL J. KIRCHBERG	CIVIL ACTION
VS	NO. 76-842
JOAN PAILLOT FEENSTRA	SECTION "G"

C O R R E C T E D J U D G M E N T

The Court having on April 22, 1977, granted the motion of third party defendants, Edwin W. Edwards and State of Louisiana and Karl J. Kirschberg, for summary judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of third party defendants, Karl J. Kirchberg, Edwin W. Edwards and State of Louisiana, and against defendant, Joan Paillot Feenstra, dismissing said defendant's third-party suit.

Dated at New Orleans, Louisiana, this _____ day of July, 1977.

NELSON B. JONES, CLERK

APPROVED AS TO FORM:

UNITED STATES DISTRICT JUDGE

ENTERED April 25, 1977, nunc pro tunc, on July 19, 1977.

5

Court Opinions*

The relevant Court Opinions are printed in the Statement of Jurisdiction, Pages A-1 through A-84.

6

Appended Orders of Court*

The relevant Appended Orders of Court are printed in the Statement of Jurisdiction, Page A-85.

7

Deleted Textual Materials*

Date	Nr.	Proceedings
3-26-76	2	M.R. on S & C served Barbara Hausman Smith on 3-23-76 and Joan Paillot Feenstra on 3-24-76
5-6-76	4	Defts. mtn. & ORDER allowing action in forma pauperis. (ABR) 5/10/76. Ent. 5/11/76.
5-6-76	5	Deft. Feenstra's mtn. & ORDER allowing Edwin Edwards & State of Louisiana as defts. in counterclaim, summs. to be served on them. (ABR) 5/10/76 Ent. 5/12/76.
5-17-76	6	M.R.'s on answer, motion & ORDERs to: State of La., served thru Mr. Woods, Asst. Sect. of State, 5/11/76; to Gov. Edwin Edwards, served thru Dianne Nabby 5/11/76; to Karl Kirchberg, served personally 5/10/76.

5-19-76	7	M.R. on summs. to: Edwin Edwards, served thru Mike Baer 5/17/76.
5-14-76	5-a	ORDER(FJRH) 5/12/76-All "G" cases temporarily re-allotted to other sections are now returned to Section "G".
5-24-76	8	M.R. on 3rd prty complt. to State of La., served thru C.C. Wood 5/19/76.
6-29-76	11	Deft's interrogs to pltf.
6-25-76	10(b)	Joint Mtn. & ORDER to CONTINUE hrg. of 3rd prty defts. mtn. for summ. jdgmnt. from 7/7/76 to 8/4/76. (MLS) 6/28/76. Ent. 6/30/76.
6-30-76	12	Joint Motion & ORDER that Plft's Motion for Summary Judg is cont to 8-4-76. (MLS) 7-2-76 ent 7-2-76.
7-13-76	13	Pltfs. ans. to defts. 1st interrogs.

7-19-76	14	Notice of Prel. Conference on 12/7/76 at 4:30 P.M., before Mag. Carriere. Ent. 7/22/76
7-30-76	15	Defts. opposition to pltfs. mtn. for summ. jdgmnt.
8-2-76	16	Mtn. of Deft., and pltf. to continue hrg. on mtn for Summary Judgment & ORDERED cont'd to 9-1-76 (MLS) 8-3-76 ent 8-4-76.
8-3-76	17	Joint Mtn. to Continue Hearing on Summary Judgment & ORDERED cont'd to 9-1-76 (MLS) ent. 8-4-76.
8-4-76	18	Mrg. of 3rd prty defts. Edwards & State of La.'s mtn. for summ. jdgmnt: CONTINUED to 8/17/76. Mrg. of deft. Kirchberg's mtn. for summ. jdgmnt; DENIED. (MLS) Ent. 8/5/76.
8-6-76	19	Deft. Feenstra's mtn. to certify class; hrg. 9/1/76.

8-20-76	20	3rd prty Deft. State of La. & Edwards' 1st supplemental memo in support of mtn. for summ. jdgmnt.
8-27-76	21	Defts. opposition to mtn. for summ. jdgmnt.
8-31-76	22	Affidavit of Carol Telford & Jeanne Keller in support of mtn. to cert. class.
8-31-76	23	Defts. interrogs. to pltf.
9-1-76	24	Pltfs. memo in support of mtn. for summ. jdgmnt.
9-1-76	25	Pltfs. 1st supplemental memo in support of mtn. for summ. jdgmnt.
9-1-76	26	Mrg. of pltfs. mtn. for summ. jdgmnt. on counterclaim & deft. Feenstra's mtn. to certify class: SUBMITTED; counsel to file supplemental memos w/in 10 days. (MLS) Ent. 9/2/76.

9-10-76	27	Supplemental Memorandum in support of mtn for summary judgment. by 3rd pty deft. State of Louisiana.
9-16-76	28	Deft. Feenstra's supplemental memorandum.
9-27-76	29	Pltf Kirchberg's ans. to defts. interrogs.
9-30-76	30	3rd party deft memo. opposing the affidavit in support of mtn. to certify the class.
10-26-76	31	M.E.: Court invites representatives from La. Law Inst., La. Bar Assn, Tulane U Sch. of Law, La. State U. Sch of Law, Sou. U School of Law & Loyola U. Sch. of Law to file amicus cuiae memoranda on the issue not later than 11/30/76 (MLS) 10/22/76 ent 10/26/76.
12-9-76	32	M.E.: Prel. conf. was held 12-7-76; final pre-trial conf.

		will be held 6-1-77 at 9:30 am; TRIAL will commence 6-16-77 at 10 am without a jury. (Mag. Carriere) 12/7/76; ent. 12/10/76.
5-3-77	34	Deft. Feenstra's mtn & ORDER that deft may proceed on APPEAL in forma pauperis (MLS) 5/9/77; ent 5/10/77.
6-17-77	xx	RECORD FORWARDED TO COURT OF APPEALS (lmh)
6-30-77	xx	SUPPL. RECORD FORWARDED TO COURT OF APPEALS (lmh)
7-12-77	xx	SUPPL. RECORD FORWARDED TO COURT OF APPEALS (lmh)
7-19-77	xx	SUPPL. RECORD FORWARDED TO COURT OF APPEALS (lmh)
1-4-80	40	JUDGMENT FROM 5th CIRCUIT - ORDERED that the judgment of the District Court is hereby REVERSED. (GOLDBERG,TUTTLE,

AND RANDALL) 12-12-79 ENT. 1-4-80.

R E O P E N E D

10-14-77	41	ORDERED that this case is allotted to Mag. KCH. (FJRH) 10-14-77 ENT. 1-14-80
1-16-80	42	Issg. notice of prel conf. before Mag. KCH 4-14-80 at 3:45 P.M. (MLS) ENT. 1-17-80.
1-29-80	X	Record returned from Court of Appeals.
4-18-80	43	(M.E. 4-14-80) (MAG. KCH) Conf. held, cont. to 9-29-80 at 1:30 P.M. ENT. 4-21-80.

8

Financial Statement of Costs of Printing Appendix

I, BEN WRZESNICK,

the manager of Instee Printing Copy Center.

do certify that the cost of printing this appendix is $251.27.

9

Certificate of Service

I, Karl J. Kirchberg, appearing as appellant in proper person, and I, Alan Ford Schoenberger, appearing as Attorney Pro Hoc Vice, do affirm on this 26th day of June, 1980, that we have served upon the following named parties by depositing (3) three copies of this Appendix in a United States Post Office, First Class Mail, Postage Pre-paid and addressed to the following counsel of record on this aforementioned date:

1) BARBARA HAUSMAN-SMITH
RFD Dothan Street
White River Junction
Vermont 05001

2) GEORGE M. STRICKLER, JR.
1419 Richards Building
New Orleans, Louisiana 70112

For Joan Paillot Feenstra

1) CYNTHIA SAMUEL
Assistant Professor of Law
Tulane University School of Law
New Orleans, Louisiana

For amicus curiae

1) WILLIAM J. GUSTE, JR.
Attorney General
Department of Justice
P. O. Box 44005
Baton Rouge, Louisiana 70804

2) LOUIS M. JONES
Assistant Attorney General
P. O. Box 44005
Baton Rouge, Louisiana 70804

3) RONALD C. DAVIS
Staff Attorney
P. O. Box 44005
Baton Rouge, Louisiana 70804

For Edwin Edwards and State of Louisiana

1) WILLIAM R. BROUGH
315 Richards Building
New Orleans, Louisiana 70112

For Karl J. Kirchberg

/s/ Karl J. Kirchberg
Karl J. Kirchberg, Appellant,
Attorney at Law proceeding
in Proper Person.
13344 Chef Menteur Highway
New Orleans, Louisiana 70129
Phone: 254-1566

/s/ Alan Ford Schoenberger

Alan Ford Schoenberger
Attorney Pro Hoc Vice
13344 Chef Menteur Highway
New Orleans, Louisiana
70129
Phone: 254-1566